

**MINUTES
of the
FIRST MEETING
of the
LAND GRANT COMMITTEE**

**June 11, 2014
Room 317, State Capitol
Santa Fe**

The first meeting of the Land Grant Committee (LGC) for the 2014 interim was called to order by Senator Jacob R. Candelaria, chair, at 9:10 a.m., on Wednesday, June 11, 2014, in Room 317 of the State Capitol in Santa Fe.

Present

Sen. Jacob R. Candelaria, Chair
Rep. Miguel P. Garcia, Vice Chair
Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado
Rep. David M. Gallegos
Rep. Jimmie C. Hall
Sen. Richard C. Martinez
Sen. Gerald Ortiz y Pino
Rep. Debbie A. Rodella
Sen. Sander Rue
Rep. Tomás E. Salazar

Absent

Sen. Daniel A. Ivey-Soto

Advisory Members

Rep. Vickie Perea

Rep. Phillip M. Archuleta
Sen. Carlos R. Cisneros
Sen. Timothy M. Keller
Rep. Patricia A. Lundstrom
Rep. W. Ken Martinez
Rep. Christine Trujillo

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Mark Edwards, Staff Attorney, LCS
John L. Mitchell, Law School Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, June 11

Introductions

Senator Candelaria called the meeting to order, welcomed the committee members and asked committee members and staff to introduce themselves. He recognized Hector Balderas, state auditor, and expressed a desire to strengthen the relationship between the state and the land grant community.

Committee-Endorsed Legislation During the 2014 Session

To begin, Mr. Carver called the committee's attention to the Interim Committee Reminder memorandum. Next, he gave an overview of the committee-endorsed legislation introduced during the 2014 session and presented the committee with a sheet that shows the disposition of the committee's bills and other land grant-related legislation.

Mr. Carver explained that House Bill 42 was signed, but none of the other endorsed legislation made it through committee. A committee member commented that there is still life left in Senate Bill (SB) 92.

Committee members discussed the Cañones water issue and questioned whether the water project went through or was vetoed. Arturo Archuleta, Land Grant Council, addressed the committee and said that all water projects were vetoed.

A committee member said that it would be helpful if a liaison from the Governor's Office would attend the LGC meetings on a regular basis and proposed writing a formal invitation letter to the Governor's Office.

It was also suggested that the committee should revisit SB 83, the incorporation of land grants into the Colonias Infrastructure Act. Although land grants are not within the mileage limit to officially be considered colonias, both of these types of communities share similar problems, such as lack of infrastructure and running water.

Motion 1:

Senator Martinez made a motion to send a letter to the Governor's Office to formally invite an appropriate representative to attend LGC meetings. Representative Hall seconded the motion, which passed without objection.

Update on the State Auditor Investigation of the Tierra Amarilla Land Grant

Mr. Balderas addressed the committee. He began by informing the committee that the case concerning the Tierra Amarilla Land Grant is still an ongoing criminal investigation and that he would only be able to speak about certain details.

In the summer of 2013, the state auditor launched an official investigation into the \$233,000 that the Tierra Amarilla Land Grant received from Wind River Energy Corp. for

mineral rights (see LGC minutes from July 16-17, 2012 for more detailed background information). The State Auditor's Office requested the land grant's bank records from Wells Fargo. Wells Fargo refused to release the documents and forced the state auditor to get a subpoena. After the documents were released, the State Auditor's Office determined that there was not itemized support for many of the transactions made from the account. The account showed ATM withdrawals, debit purchases, dental work, foreign currency exchange and more. The State Auditor's Office was concerned that multiple individuals may be involved, and it shared the information with the Federal Bureau of Investigation and the Tax Fraud Investigations Division of the Taxation and Revenue Department.

Mr. Balderas reiterated that he cannot discuss monetary amounts. He also mentioned that Mr. Wells is deceased and his estate is in probate. The State Auditor's Office notified the family of the current investigation and possible future litigation.

Mr. Balderas expressed concern with accountability practices. There are two types of accountability practices: back-end and front-end. Back-end accountability is the most frequently used but least effective method in preventing fraud. It occurs when something has already gone wrong. Front-end accountability methods, which are more effective, occur before something goes wrong and include better reporting, increased training and partnerships with local governments. The return on investment for front-end accountability is substantial. For example, a \$50,000 front-end accountability allocation would have created proper oversight and training that could have prevented the fraud.

Creating an umbrella entity consisting of multiple land grants was discussed. This idea would simplify the audit process because the umbrella entity would only require a single, annual audit as opposed to hundreds or thousands of annual land grant audits.

There was concern that the state auditor was forced to subpoena Wells Fargo to get the bank records and that such a process seems unnecessary and affords a great deal of time in which potential fraud may be covered up. Another committee member expressed appreciation for the breadth of the state auditor's investigation. Comments were made that the land grant communities need more training and that the state auditor can provide essential information on community needs.

Mr. Carver explained that the Wind River Energy Corp. employees who were originally involved in the deal are no longer with the company, and the new leadership does not have interest in pursuing any claims against the land grant. A committee member requested that a representative of the oil and gas industry address the committee to discuss Wind River Energy Corp.'s business practices and explain the industry standards in deals like this one.

The committee members discussed the possibility of developing a subcommittee that will identify the appropriate land grant oversight agency.

A committee member asked why the State Auditor's Office only investigated the Wind River Energy Corp. The committee member believes that another company was involved and wondered why this issue was not investigated. Mr. Balderas stated that the scope of the investigation was only on the accounts at Wells Fargo held by Mr. Wells or the land grant. There were no other accounts or companies involved that the State Auditor's Office was aware of.

Mr. Balderas explained that the legislature appropriated \$160,000 for small political subdivision audits. The appropriation is used to assist land grant governments that are struggling with audits. Unfortunately, the State Auditor's Office cannot assist every community and must determine which land grants have the most immediate needs. Currently, land grants may be referred to the State Auditor's Office for a needs assessment.

A committee member opined that there should be criteria and set priorities developed for the money. Another member mentioned that, for accountability reasons, the committee should look at what funding is still outstanding and current before the money is allocated to new projects.

There was concern as to whether or not a civil complaint under the Fraud Against Taxpayers Act (FATA) was made to the Attorney General's Office regarding the \$233 fraud investigation. Under the FATA, the state can recoup up to three times the amount of damages sustained because of a violation. Any member of the public can initiate a FATA complaint on behalf of the state. The money was intended for the people of the land grant and it did not go to them.

2014 Interim Work Plan and Meeting Schedule Development

Mr. Carver, Arturo Archuleta, Juan Sanchez, chair of the Land Grant Council and president of the Merced del Pueblo de Chilili, and Dr. Manuel Garcia y Griego, director, Land Grant Studies Program, University of New Mexico (UNM), discussed the proposed work plan for the 2014 interim. In addition to approving each of the items on the proposed work plan, the committee discussed the following items:

- establishing the New Mexico Department of Hispanic Affairs;
- creating a land grant law clinic similar to the Tribal Law Clinic at the UNM School of Law (SOL);
- implementing a study by Hispanic males and females from New Mexico on the human and civil rights of the Chicano/a population. A speaker from the University of Alabama should be invited to present and discuss Chicano/a legal education. The dean of the UNM SOL should be invited to attend the presentation;
- resurrecting Senate Bill 83, which would incorporate land grants into the Colonias Infrastructure Act;
- getting an update from the Bureau of Land Management on the progress of returning common lands to the land grants. This presentation should be done when the committee meeting is held at a land grant community, not at UNM;

- integrating a working group to address various issues surrounding the funding and administration of capital projects in land grants and to develop legislation prior to the November meeting; and
- exploring a new capital outlay methodology. Currently, the process involves reimbursement of out-of-pocket expenses. Many land grants cannot afford to come out of pocket and do not apply for capital outlay. A study of the City of Albuquerque's method and other best practices should be included.

Motion 2:

Senator Ortiz y Pino made a motion to draft a letter to the dean of the UNM SOL prior to the October committee meeting. The letter will outline the desire for a land grant law clinic and other ideas as to how the SOL can play a role in training the legal community (continuing legal education, collaboration with the State Bar of New Mexico, judicial conclave, etc.). Representative Rodella seconded the motion, which passed without objection.

Motion 3:

Representative Hall made a motion to integrate the funding and administration of a capital projects working group into the work plan. Representative Baldonado seconded the motion, which passed without objection.

Public Comment

Jerry Fuentes discussed issues concerning the Truchas Land Grant. He was concerned about possible fraud and corruption. He requested funds for building new fences that have been destroyed. The loss of the fences has allowed cows to move back and forth between federal land and the land grant.

Motion 4:

Senator Candelaria moved to adopt the work plan and meeting schedule as amended. Representative Garcia seconded the motion, and the motion passed without objection.

Adjournment

There being no further business before the committee, the first meeting of the Land Grant Committee for the 2014 interim adjourned at 11:55 a.m.